

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANCISCO VILLA MERAZ

Defendant.

NOS: CR-10-6098-RMP  
CR-11-6023-RMP

ORDER GRANTING  
DEFENDANT'S MOTION TO  
PROCEED IN FORMA PAUPERIS  
AND DENYING DEFENDANT'S  
MOTION FOR DISCOVERY AND  
MOTION UNDER 28 U.S.C. § 2255

Before the Court is Defendant Francisco Villa Meraz's motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, ECF No. 122; motion to proceed in forma pauperis, ECF No. 123; and motion for discovery, ECF No. 108.<sup>1</sup>

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<sup>1</sup>Mr. Meraz was the Defendant in three separately numbered cases before this Court. He has spread his motions across two of those case numbers. Mr. Meraz filed his § 2255 motion and his motion to proceed in forma pauperis under CR-11-6023-RMP. Mr. Meraz filed his motion for discovery under CR-10-6098-

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1 The Court has reviewed the motions, all other relevant filings, and is fully  
2 informed.

3 **BACKGROUND**

4 On December 14, 2010, Mr. Meraz was charged by indictment in case  
5 number CR-10-6098 with one count of being an alien in possession of a firearm.

6 On February 16, 2011, Mr. Meraz was charged by indictment in case number CR-  
7 11-6018 with being an alien in the United States after deportation. On March 22,  
8 2011, Mr. Meraz was charged by indictment in case number CR-11-6023 with  
9 conspiracy to distribute 500 grams or more of a substance containing  
10 methamphetamine and five kilograms or more of a mixture of substance containing  
11 cocaine.

12 On May 25, 2011, Mr. Meraz pleaded guilty to the conspiracy charge in CR-  
13 11-6023. As part of his plea agreement, the charges under case numbers CR-10-  
14 6098 and CR-11-6018 were dismissed at sentencing. In his plea agreement, Mr.  
15 Meraz agreed that the following was true and could be proven beyond a reasonable  
16 doubt:

17 The Defendant admits that between January 1, 2002 and  
18 November 23, 2010, he conspired with, that is agreed with, other  
individuals located in the Eastern District of Washington to distribute

19 RMP. As CR-11-6023-RMP was the case in which Mr. Meraz pleaded guilty, all  
20 filings should be entered under that case number.

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1 5 kilograms of cocaine and 500 grams of a mixture or substance  
2 containing methamphetamine to other individuals. The Defendant  
3 admits that the object of this conspiracy was to distribute 5 kilograms  
4 or more of cocaine and 500 grams or more a [sic] mixture or  
5 substance containing methamphetamine. The Defendant admits that  
6 he became a part of this conspiracy and had knowledge that the object  
7 of the conspiracy was to distribute cocaine and methamphetamine.  
8 The Defendant admits he distributed cocaine and methamphetamine in  
9 furtherance of this conspiracy.

10 On November 23, 2010, a search warrant was executed at the  
11 Defendant's residence in Kennewick, Washington. During the  
12 execution of the search warrant, officers located approximately  
13 \$20,000 in currency. Also located were various items indicative of  
14 drug trafficking, including packages containing cocaine residue,  
15 scales, and drug ledgers. These ledgers contained information about  
16 customers involved in the distribution of cocaine. A firearm was  
17 located in the Defendant's bedroom closet. This firearm was an  
18 operational 9mm pistol.

19 ECF No. 50 at 4-5.

20 Also as part of the Fed. R. Cr. P. 11(c)(1)(c) plea agreement, Mr. Meraz  
agreed to waive his appeal rights, and the right to attack his conviction or sentence  
by motion under section 2255, in exchange for an agreed upon sentence of seventy  
months incarceration followed by a five-year term of supervised release. ECF No.  
50 at 8-9. Mr. Meraz agreed that should such a sentence be imposed, he was  
waiving his right to file a § 2255 motion except a motion "based upon ineffective  
assistance of counsel based on information not now known by the Defendant and  
which, in the exercise of due diligence, could not be known by the Defendant by  
the time the Court imposes the sentence." ECF No. 50 at 8-9.

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1 At his plea hearing, the Court asked Mr. Meraz whether he had agreed with  
2 one or more people to distribute methamphetamine and cocaine. Mr. Meraz  
3 admitted that he had agreed with one or more people to distribute  
4 methamphetamine but he was not as sure about whether he had agreed with one or  
5 more people to distribute the cocaine. He did admit that he had worked with  
6 another person to distribute drugs.

7 The Court sentenced Mr. Meraz to 70 months incarceration and a five-year  
8 term of supervised release as specified in the plea agreement. Mr. Meraz has now  
9 filed the present motions arguing that his sentence is defective because the plea  
10 agreement fails to present a sufficient factual basis to establish a conviction for  
11 conspiracy to distribute methamphetamine and cocaine. He also seeks to proceed  
12 in forma pauperis and to engage in discovery.

### 13 DISCUSSION

#### 14 Motion to Proceed In Forma Pauperis

15 Mr. Meraz has moved to proceed on his § 2255 motion without the payment  
16 of fees. The Court finds from a review of the affidavit filed in support of his  
17 motion, ECF No. 123, that Mr. Meraz is qualified to proceed in forma pauperis and  
18 may proceed without the payment of any filing fee.

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1 **Motion for Discovery**

2 Discovery is not automatic in a section 2255 proceeding. Instead, a court  
3 “may, for good cause, authorize a party to conduct discovery.” Fed. R. Governing  
4 § 2255 Proceedings 6(a). “A party requesting discovery must provide reasons for  
5 the request.” Fed. R. Governing § 2255 Proceedings 6(b).

6 Mr. Meraz makes two requests for discovery. First, he seeks transcripts of  
7 his plea and sentencing hearings and a copy of the Government’s sentencing  
8 memorandum filed in CR-11-6023. Both the transcripts and the memorandum are  
9 records of the Court and not within the scope of usual discovery requests from a  
10 party. Accordingly, the Court will treat Mr. Meraz’s first discovery request as a  
11 request for court records.

12 Generally, transcripts are not produced in paper form and will be provided to  
13 a party only for a fee. *See* 28 U.S.C. § 753(f). Hearing transcripts may be  
14 provided to a movant under section 2255 at no expense where (1) the movant is  
15 appearing in forma pauperis; (2) the district court certifies that the motion is not  
16 frivolous; and (3) the transcript is needed to decide the issue. *United States v.*  
17 *MacCollom*, 426 U.S. 317, 320-21 (1976) (citing 28 U.S.C. § 753(f)). After  
18 analyzing the scope of Mr. Meraz’s § 2255 motion, the Court finds that the  
19 transcript is not needed to decide the issues raised by Mr. Meraz’s 2255 motion.

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1 Accordingly, the Court will not order production of the transcripts at public  
2 expense.

3 With regard to the Government's sentencing memorandum, even for those  
4 Defendants proceeding in forma pauperis, the Court generally requires a cost of  
5 fifty cents per page for paper copies of court records. As the requested sentencing  
6 memorandum is only three pages, the Court will attach a copy of that  
7 memorandum to this order at no cost to Mr. Meraz. However, any future records  
8 requests should be accompanied by payment or Mr. Meraz should present an  
9 argument to this Court as to why such paper copies are necessary to the resolution  
10 of any issue and why the Defendant cannot pay for them.

11 Mr. Meraz's second request for discovery is a broad request for all  
12 documents in the Government's possession relating to Mr. Meraz's conspiracy  
13 charges and conviction. The reason given in support of this broad request is that  
14 Mr. Meraz believes that the Government lacks sufficient evidence to prove beyond  
15 a reasonable doubt that he was involved in a conspiracy to distribute narcotics. As  
16 Mr. Meraz admitted to distributing drugs in his plea agreement and at his change of  
17 plea hearing and waived his right to appeal his conviction, the Court finds that this  
18 is an insufficient basis to necessitate discovery. Accordingly, Mr. Meraz's motion  
19 for this discovery will be denied.

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**Section 2255 Motion**

In his § 2255 motion, Mr. Meraz argues that (1) his due process rights were violated, and he received ineffective assistance of counsel when his attorney persuaded him to plead guilty because the plea agreement failed to establish a factual basis to support his conviction for conspiracy; and (2) the failure of his conviction to be supported by a factual basis relieved the Government of its burden to prove the elements of the conspiracy charge beyond a reasonable doubt and rendered this court without jurisdiction to impose sentence.

**Waiver**

Nothing precludes a defendant from waiving the statutory right to file a § 2255 petition challenging the length of his sentence. *United States v. Navarro-Botello*, 912 F.2d 318, 321 (9th Cir. 1990); *United States v. Cope*, 527 F.3d 944, 949 (9th Cir. 2008). Such a waiver is enforceable if ““(1) the language of the waiver encompasses [the defendant’s] right to appeal on the grounds raised, and (2) the waiver is knowingly and voluntarily made.”” *United States v. Leniear*, 574 F.3d 668, 672 (9th Cir. 2009) (quoting *United States v. Speelman*, 431 F.3d 1226, 1229 (9th Cir. 2005)); *see also Abney v. United States*, 431 U.S. 651, 656 (1997) (“[T]here is no constitutional right to appeal.”).

Waiver of appeal rights does not “categorically foreclose” all § 2255 proceedings, “such as a claim of ineffective assistance of counsel or

1 involuntariness of waiver.” *United States v. Abarca*, 985 F.2d 1012, 1014 (9th Cir.  
2 1993); *see also Washington v. Lampert*, 422 F.3d 864, 870 (9th Cir. 2005).

3 Generally, however, an express waiver of a statutory right, including § 2255  
4 petitions, bars the defendant from moving the sentencing court to vacate, set aside,  
5 or correct the sentence. *Abarca*, 985 F.2d at 1014.

6 Mr. Meraz waived his right to challenge his sentence by direct appeal or by  
7 motion under section 2255, except for a challenge asserting ineffective assistance  
8 of counsel based on information not known to Mr. Meraz at the time of sentencing.  
9 ECF No. 50 at 9. While Mr. Meraz has framed his challenge as one for ineffective  
10 assistance of counsel, Mr. Meraz has not identified any information unknown to  
11 him at the time of sentencing that supports a claim for ineffective assistance of  
12 counsel.

13 Mr. Meraz’s argument is that the factual basis in the plea agreement fails to  
14 support a conviction for conspiracy. However, Mr. Meraz signed the plea  
15 agreement with the benefit of counsel and an interpreter, and the Court engaged in  
16 a colloquy with Mr. Meraz and proceeded through the plea agreement, section by  
17 section. As part of that process, counsel for the Government explained both the  
18 elements that would have to be proven at trial to convict Mr. Meraz as well as the  
19 Government’s evidence to support a conviction. Mr. Meraz agreed that he had  
20 conspired to distribute drugs. Accordingly, Mr. Meraz was well aware at the

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1 change of plea hearing of the facts contained in the plea agreement and the  
2 elements of the crime of conspiracy to distribute narcotics. Therefore, the instant  
3 challenge to Mr. Meraz's conviction is within the scope of Mr. Meraz's waiver of  
4 his right to bring a challenge under section 2255, and he is barred from proceeding  
5 by his own waiver.

6 Even if the Court were inclined to reach the merits of Mr. Meraz's § 2255  
7 motion, the motion would still fail. A judge must determine whether there is a  
8 factual basis for a guilty plea before entering judgment. Fed. R. Crim. P. 11(b)(3).  
9 "To establish a factual basis for the plea, the court may consider all of the evidence  
10 before it at the time of judgment." *United States v. Alber*, 56 F.3d 1106, 1110 (9th  
11 Cir. 1995).<sup>2</sup> "The court need not be convinced beyond a reasonable doubt that an  
12 accused is guilty. It need only be convinced that there is sufficient evidence to  
13 justify the reaching of such a conclusion." *Id.* (quoting *United States v. Neel*, 547  
14 F.2d 95, 96 (9th Cir. 1976) (per curiam)).

15 The elements of the crime of conspiracy to distribute a controlled substance  
16 are: (1) an agreement beginning on or about a date and ending on or about a date

17 <sup>2</sup>*Alber* interprets former Federal Rule of Criminal Procedure 11(f). Rule  
18 11(f)'s factual basis requirement was recodified as Rule 11(b)(3) as part of the  
19 general restyling of Rule 11 in 2002. No substantive change in the law was  
20 intended. Fed. R. Crim. P. 11 advisory committee's note to 2002 amendments.

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1 between two or more people to distribute a controlled substance; and (2) the  
2 defendant joined the agreement with knowledge of its purpose and intending to  
3 help accomplish that purpose. 21 U.S.C. §§ 841(a), 846; Ninth Circuit Model  
4 Criminal Jury Instruction 9.19. Mr. Meraz admitted in his plea agreement that he  
5 agreed with other individuals to distribute five kilograms of cocaine and 500 grams  
6 of a mixture or substance containing methamphetamine. ECF No. 50 at 4. Such  
7 distribution was to be to other persons outside of the conspiracy. ECF No. 50 at 4.  
8 Mr. Meraz admitted that he knew that the purpose of the agreement was to  
9 distribute cocaine and methamphetamine. ECF No. 50 at 5. He further admitted  
10 that he actually did distribute such cocaine and methamphetamine in furtherance of  
11 the conspiracy. ECF No. 50 at 5. The admission notes that the conspiracy existed  
12 from January 1, 2002 until November 23, 2010. ECF No. 50 at 4.

13 Independent evidence supported the credibility of Mr. Meraz's admissions.  
14 His residence was searched and indicia of drug distribution were found, including  
15 scales, ledgers, packages containing cocaine residue, and \$20,000 cash. ECF No.  
16 50 at 5. Mr. Meraz's admissions at his plea hearing corroborated some of the  
17 admissions in his plea agreement and failed to contradict any of the admissions in  
18 his plea agreement. Accordingly, there was a factual basis supporting Mr. Meraz's  
19 guilty plea.

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1 Mr. Meraz has provided no other evidence to support a challenge to his plea.  
2 While he asserts that the Government lacks evidence to prove the elements to  
3 which he has admitted, he provides no basis for that belief. He argues that his  
4 counsel failed to develop discovery during the pretrial process but provides no  
5 further elaboration. In short, Mr. Meraz's challenge to his conviction and sentence  
6 is based on the concept that his plea agreement lacks a factual basis to support his  
7 conviction. The Court rejects that contention and, therefore, rejects Mr. Meraz's  
8 2255 motion.

### 9 **Certificate of Appealability**

10 An appeal of this Order may not be taken unless this Court or a Circuit  
11 Justice issues a certificate of appealability, finding that "the applicant has made a  
12 substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).  
13 This requires a showing that "reasonable jurists would find the district Court's  
14 assessment of the constitutional claims debatable or wrong." *Slack v. McDaniel*,  
15 529 U.S. 473, 484 (2000). If a claim is dismissed on procedural grounds the Court  
16 must determine whether "jurists of reason would find it debatable whether the  
17 petition states a valid claim of the denial of a constitutional right and that jurists of  
18 reason would find it debatable whether the district court was correct in its  
19 procedural ruling." *Slack*, 529 U.S. at 474.

1 A certificate of appealability should not be granted unless both components,  
2 one directed at the underlying constitutional claims, and the second directed at the  
3 court's procedural holding, are satisfied. Id. The Court may address either the  
4 constitutional or procedural issue first. Id. Based on the Court's preceding  
5 analysis, the Court concludes: 1) that the Movant has failed to make a substantial  
6 showing of a denial of a constitutional right; and 2) that jurists of reason would not  
7 find it debatable whether the Court was correct in any substantive or procedural  
8 ruling. Thus a certificate of appealability should not issue.

9 Accordingly, **IT IS HEREBY ORDERED:**

- 10 1. The Defendant's motion to proceed in forma pauperis, **ECF No. 123** in  
11 case **CR-11-6023-RMP**, is **GRANTED**.
- 12 2. The Defendant's motion for discovery, **ECF No. 108** in **CR-10-6098-**  
13 **RMP**, is **DENIED**.
- 14 3. The Defendant's motion to vacate, set aside, or correct sentence, **ECF**  
15 **No. 122** in **CR-11-6023-RMP**, is **DENIED**.

16 **IT IS SO ORDERED.**

17 The District Court Executive is hereby directed to:

- 18 • Enter this Order and to provide copies to counsel;
- 19 • Attach a copy of ECF No. 67 in case number CR-11-6023 to a copy of  
20 this Order and send them to the Defendant;

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- 1 • Inform the Ninth Circuit Court of Appeals that if Mr. Meraz files a
- 2 Notice of Appeal that a certificate of appealability is **DENIED**; and
- 3 • **CLOSE** the corresponding civil file, **CV-12-5109-RMP**.

4 **DATED** this 14th day of February 2013.

5  
6 *s/ Rosanna Malouf Peterson*

7 ROSANNA MALOUF PETERSON  
8 Chief United States District Court Judge  
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